



## House Judiciary Committee

### HB 4980-4985- Expungement

Position: Support

September 23, 2019

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The ACLU of Michigan supports policies to eliminate barriers that prevent returning citizens from fully reintegrating back into the community. While one third of the population has a criminal record of some kind, due to the well-recognized racial inequalities of the criminal justice system, an estimated 25% of African American adults have felony records compared to only 6% of non-African Americans.<sup>1</sup> Even after an individual serves and completes their full mandated sentence for a charge, a lasting criminal record can negatively impact a person's ability to obtain employment, find secure housing, access funding for higher education opportunities, or gain or maintain custody of children, among other complications. Men with criminal records account for 34 percent of all non-working men ages 25 to 54.<sup>2</sup>

The ACLU of Michigan supports HB 4980-4985 because it will help regulate and expand individual rights to have old convictions expunged from their record after a long period without any additional offenses.

#### **Michigan legislature should continue expanding the eligibility for expungements.**

Although the expansion of expungement options is a step in the right direction for individual liberties, the current bill package excludes a long list of offenses from eligibility that leave thousands without options to clear their records. Any charges that fall under the umbrella category of "assaultive crimes"<sup>3</sup> or "serious misdemeanors".<sup>4</sup> The class of serious misdemeanors includes a long list assorted of charges including illegal entry, intentionally aiming a firearm without malice, and injuring a worker in a (traffic) work zone. This also includes crimes initially charged as "serious misdemeanors" even if the resulting conviction was not for the one of the listed offenses. The "assaultive crimes" list also includes charges such as stalking and carjacking.

The exclusion of any convictions under these categories significantly and unnecessarily limits the number of people eligible for expungement. We encourage the legislature to strengthen the bill by including all misdemeanor and felony convictions. Anyone who has earned the right to return to society has already paid their debts under the law. The law should not impose an additional sentence by

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<sup>1</sup> Shannon, S., Uggen, C., Thompson, M., Schnittker, J., & Massoglia, M. (2011). *Growth in the U.S. ex-felon and ex-prisoner population, 1948–2010*, Washington, DC: Population Association of America, Retrieved from:<http://paa2011.princeton.edu/papers/111687> [hereinafter "Felon Population Growth"].

<sup>2</sup> Emsellem, M. & Natividad Rodriguez, M., *Advancing a Federal Fair Chance Hiring Agenda*, National Employment Law Project (Jan. 2015) available at: <http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf> (citing Binyamin Appelbaum, "The Vanishing Male Worker: How America Fell Behind," New York Times, Dec. 11, 2014.)

<sup>3</sup> See MCL 770.9A.  
<sup>4</sup> See MCL 780.811.



allowing them to face discrimination for years after they have earned the right to try to contribute to society.

**There are significant racial disparities in marijuana convictions that must be addressed.**

While progress in reforming our nation’s drug laws is vital, we must remember that if we legalize without righting the wrongs of past marijuana enforcement, we risk reinforcing the decades of disproportionate harm communities of color have faced and endured. Expungement is especially crucial in order to correct decades of racially biased marijuana criminalization. As of less than a decade ago in 2010, across the state of Michigan, Black people were 3.3 times more likely than whites to be arrested for marijuana possession.<sup>5</sup>

Nearly 81.7% of all marijuana-related arrests in the state of Michigan in 2010 were for possession. These racial disparities were even more staggering in certain counties when controlling for demographic proportions:

- in Monroe county Black people were 15.4 times more likely to be arrested for possession,
- in St. Clair county they were 10.1 times more likely to be arrested,
- in Jackson county that number was 8.6 times, in Kalamazoo county it was 8.5 times, and
- in Kent county Black people were 7.5 times more likely than white people to be arrested for marijuana possession<sup>6</sup>.

These disparities cannot be accounted for by differences in marijuana use as Black and white people have consistently been shown to use marijuana at equal rates.<sup>7</sup>

**Hundreds of thousands of people in Michigan still have convictions on their records for marijuana possession or use.**

The impact of marijuana expungement would be far reaching for the many people in the state with marijuana conviction records. Many of these convictions are recent: 55,246 marijuana possession arrests occurred in the state between 2014-2016 alone.<sup>8</sup> As of 2019, there are still over 3,500 people currently either incarcerated or on probation for a felony marijuana offense, despite the fact that such actions may no longer be considered a felony under new legalization provisions.<sup>9</sup> The need for reform is even more urgent for those currently incarcerated or on probation for marijuana offenses that would no longer warrant such a sentence; the longer Michigan waits to implement these bills, the longer people may be wrongly incarcerated, costing them their livelihoods and costing the state unnecessary resources.

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<sup>5</sup> The War on Marijuana in Black and White, ACLU (June 2013), available at: <https://www.aclu.org/report/report-war-marijuana-black-and-white>. (Hereinafter “ACLU 2013 Report”).

<sup>6</sup> ACLU 2013 Report, supra n. 5.

<sup>7</sup> ACLU 2013 Report, supra n. 5 noting “Marijuana use is roughly equal among Blacks and whites. In 2010, 14% of Blacks and 12% of whites reported using marijuana in the past year; in 2001, the figure was 10% of whites and 9% of Blacks. In every year from 2001 to 2010, more whites than Blacks between the ages of 18 and 25 reported using marijuana in the previous year.”

<sup>8</sup> National Organization for the Reform of Marijuana Laws, Michigan Marijuana Arrests, available at: <https://norml.org/data/item/michigan-marijuana-arrests> (citing Federal Bureau of Investigation, Uniform Crime Reporting Program).

<sup>9</sup> M. Live, available at: <https://www.mlive.com/news/2019/07/235k-people-could-have-their-records-expunged-of-marijuana-charges-under-proposed-bill.html>



**The marijuana industry is expanding rapidly, but those with criminal backgrounds face barriers to participation.**

Michigan's developing marijuana industry is sure to be economically prosperous, but new businesses in this sector require capital investment that may be inaccessible for those with a marijuana conviction record. People who were previously impacted by criminal prosecution should have the opportunity to participate in and contribute to the now-legal industry. While it won't make up for any previous economic injustice, marijuana expungement may play a role in helping qualified individuals join the industry, particularly disproportionately criminalized people of color.<sup>10</sup>

This legislation is a step in the right direction, and we urge the Michigan legislature to have the courage to pass even more expansive policies by adopting an automatic expungement provision to automatically erase criminal charges for people previously convicted of marijuana use or possession without needing an application. Automatic expungement is necessary because shifting the burden of clearing the stain of an unjust law onto the people who have suffered from it unnecessarily already, while others reap economic benefits contradicts the principles of equity, fairness, and justice that make legalization such an urgent racial and social justice priority to begin with. Additionally, we must allow applications for expungement of other marijuana-related offenses, including distribution of marijuana, that are no longer considered a felony offenses. Forcing people to bear the consequences of a criminal conviction for an offense that's no longer considered a crime simply prolongs the injustices of the failed, discriminatory drug war.

Respectfully submitted,

Kimberly S. Buddin  
Policy Counsel  
American Civil Liberties Union of Michigan  
[kbuddin@aclumich.org](mailto:kbuddin@aclumich.org)

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<sup>10</sup> Oakland Press, available at: [https://www.theoaklandpress.com/news/local/criminal-expungements-may-be-key-to-boosting-minority-participation-in/article\\_9c1abe18-a8d9-11e9-8889-7f5c34547102.html](https://www.theoaklandpress.com/news/local/criminal-expungements-may-be-key-to-boosting-minority-participation-in/article_9c1abe18-a8d9-11e9-8889-7f5c34547102.html).